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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/765,785	01/27/2004	Daniel Corrieri		2479

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EXAMINER

CASTELLANO, STEPHEN J

ART UNIT PAPER NUMBER

3727

DATE MAILED: 08/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/765,785

Applicant(s)

CORRIERI, DANIEL

Examiner

Stephen J. Castellano

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 1-27-04 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 1-27-04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the beverage aperture with no slot as claimed in claim 5 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim 5 is objected to because the beverage aperture which has not slot has not been shown.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 5 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 5 contradicts claim 1 by stating that the beverage aperture is not slotted when claim 5 depends from claim 2 which states that the beverage aperture is slotted.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3, 7-10, 13, 15, 16, 19 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by McSpadden.

McSpadden discloses a combination food and beverage plate with a first food section having a recessed compartment (compartments 14), a second beverage section having a beverage aperture 11 and a grip aperture (on underside of plate as shown in Fig. 2), a plate rim (the upper rounded edge around the perimeter of compartments 14, the upper edge is rounded in cross sectional profile) and a support rim (the upper rounded edge around the beverage aperture 11), the support rim defines the outer perimeter of the beverage aperture as well as defines the upper boundary of the grip aperture, the plate rim slopes upward from the recessed compartment at the inner edge of the rounded cross sectional profile.

Re claims 3 and 13, the circular configuration of the grip aperture includes a semi circle. Re claim 7, the outer and downwardly extending skirt on the underside of the plate reinforces the recessed food compartment, the beverage aperture and the grip aperture.

Claims 1, 8-10, 13, 15, 19 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Perlis et al. (Perlis).

Perlis discloses a combination food and beverage plate with a first food section having a recessed compartment, a second beverage section having a beverage aperture (in the upper surface) and a grip aperture (on underside of plate as shown in Fig. 6B), a plate rim (the uppermost periphery of the first section which is convexly curved on its upper surface) and a support rim (the planar uppermost portion of the second section, the planar portion defines an outer perimeter of the beverage aperture as well as defines an upper boundary of the grip aperture).

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2, 4, 5, 14 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over McSpadden in view of Jacobson.

McSpadden discloses a bottom opening in the beverage compartment. McSpadden discloses the invention except for the beverage aperture slot. Jacobson teaches a slot in the upper support rim, side wall and bottom plane of the beverage compartment. It would have been obvious to add the slot to provide means to allow insertion of stemware from the side.

Re claim 5, the not slotted configuration is shown insofar as shown in applicant's drawings and insofar as this claim is dependent on claim 2 which requires a slotted configuration.

Claims 2, 4, 5 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Perlis in view of Jacobson.

Perlis discloses the invention except for the beverage aperture slot and a circular bottom opening. Jacobson teaches a slot in the upper support rim, side wall and bottom plane of the beverage compartment with a circular bottom opening. It would have been obvious to add the slot and bottom opening to provide means to allow insertion of stemware from the side.

Re claim 5, the not slotted configuration is shown insofar as shown in applicant's drawings and insofar as this claim is dependent on claim 2 which requires a slotted configuration.

Claims 1-6 and 10-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Berger et al. (Berger) in view of Perlis.

Berger discloses a combination food and beverage plate with a first food section having a recessed compartment 17 with an open bottom, a second beverage section having a beverage aperture 22 and grip apertures 26, 27, a plate rim 16 and a support rim (21 which includes the grip apertures 26, 27). Berger discloses the invention except for the bottom for the first section and the plate rim extending upwardly. Re claim 4, Berger doesn't disclose a tapered sleeve for the beverage aperture. Perlis teaches a bottom for the first section, a plate rim that extends upward and a tapered sleeve for the beverage aperture. It would have been obvious to add a bottom to prevent objects from falling through and to add to the structural strength of the plate. It would have been obvious to add an upward extension to the plate rim to increase the height of the plate to prevent food from falling off of or flowing over the plate rim. It would have been obvious to add a taper sleeve by vertically extending the beverage aperture to provide a greater

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surface area of contact to more firmly support the beverage and to adapt the beverage aperture to tapered containers.

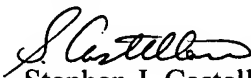
Re claims 6 and 18, the grip apertures 26, 27 are on opposite sides of the beverage aperture. The grip aperture circumference extends through an arc of greater than 180 degrees and includes the semi circular configuration of claim 3.

Re claims 11 and 12, the combined outer perimeter shape of the plate rim and the support rim provide an elongated circular shape similar to an ellipse and the plate rim and support rim are coplanar in a horizontal plane. It would have been obvious as a matter of design choice to modify the combined outer perimeter shape to be elliptical insofar as there is no criticality given to an elliptical shape and insofar as the shape disclosed is elliptical with the exception that the second portion has inwardly concave portions associated with the beverage aperture and two grip apertures.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Castellano whose telephone number is 571-272-4535. The examiner can normally be reached on increased flexibility plan (IFP).

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Stephen J. Castellano
Primary Examiner
Art Unit 3727

sjc